

CHAPTER 8 EXEMPTIONS, DEVIATIONS, WAIVERS, AND AUTHORIZATIONS

1. GENERAL. The granting of an exemption is generally viewed as an alternative method of complying with a regulatory requirement. Exemptions are promulgated under FAR Part 11. A grant of exemption and each specific condition and limitation is a regulatory requirement. A petition for exemption may be submitted to the FAA by any interested person.

3. CONTENT OF PETITION. Each petition for an exemption should contain the following:

- The rule requirement from which exemption is sought
- The nature and extent of the requested regulatory relief
- A description of each person or aircraft to be covered by the exemption
- Any information, views, or arguments to support the action sought
- The reasons why a grant of exemption would be in the public interest
- The action to be taken by the petitioner to provide a level of safety equivalent to that provided by the rule from which exemption is sought or the reason why a grant of exemption would not adversely affect public safety

5. PREPARING AND MAILING THE PETITION.

Each petition should be submitted to the FAA at least 120 days before the proposed effective date of the requested exemption. FAR Part 11 specifies the address for the proper FAA action office based on the subject of the petition. Frivolous or ill-prepared petitions are rejected and both the petitioner's and the FAA's resources are ill-used in the rejection process.

A. Petitions are frequently rejected because the petitioner failed to identify and explain the reasons why a

grant of exemption would be in the public interest. The petitioner's interest is not necessarily considered to be in the "public interest". A petitioner's statement that a grant of exemption would be in the public interest because it would reduce the petitioner's operating costs is not acceptable and is a reason for FAA rejection of the petition.

B. Each petition for exemption should be well-conceived and in writing.

7. PROCESSING THE PETITION. A summary of each petition for exemption is normally published in the Federal Register and the public has 20 days to submit comments to the FAA assigned public docket. After the close of the public comment period, the FAA action office considers all comments received and decides whether to accept or deny the petition. The decision document is then prepared, coordinated, signed, and mailed to the petitioner.

9. DISTRIBUTION AND AVAILABILITY OF EXEMPTIONS. Additional copies of both grants and denials of exemptions are mailed to each Regional Flight Standards Division. Each document is also placed in the archives of the FAA's computer system located in Oklahoma City (AFS-600) and may be accessed through the Automated Exemption System (AES). Access to the system may be obtained by contacting the program manager at each regional headquarters. A grant of exemption normally contains conditions and limitations applicable to the grantee and is valid for a period of two years. However, some grants of exemption may be valid for only a few months (for example, delayed compliance with an aircraft modification due to the non-availability of parts).

11. AMENDING OPERATIONS SPECIFICATIONS. The operations specifications of an operator granted an exemption are amended to show that the certificate holder is authorized to use the exemption in conducting its operations. (See paragraph A5 of the operations specifications.)

13. PETITIONING FOR RECONSIDERATION. A petitioner who is denied an exemption may petition the FAA Administrator for reconsideration within 30 days after being notified of the denial of exemption. If a petition for exemp-

tion is granted, a person other than the initial petitioner may file a petition for reconsideration with the FAA Administrator within 45 days after the grant of exemption is issued. The petitioner's request for reconsideration of its petition must be based on the existence of one or more of the following:

- An erroneous material fact
- A necessary legal conclusion that is without governing precedent or is a departure from or contrary to law, FAA rules, or precedent
- An additional fact relevant to the decision which was not presented in the initial petition for exemption. (The petition for reconsideration must state the reason the additional fact was not presented in the initial petition.)

15. PROCESSING A PETITION FOR RECONSIDERATION. A summary of a petition for reconsideration of a grant or denial of exemption may be published in the Federal Register. If accomplished, a reasonable period for public comment is announced in the summary. In either event (with or without publication in the Federal Register), the FAA action office prepares and coordinates the decision document.

A. If a grant or partial grant of exemption is issued, the document is signed by the FAA official who has been delegated such authority and responsibility in FAR Part 11.

B. If a denial of petition for reconsideration is prepared and coordinated, the decision document is signed by the FAA Administrator. Copies of the grant, partial grant, or denial of petition for reconsideration are mailed and placed in archives as previously discussed. If the petitioner disagrees with the FAA Administrator's decision, the petitioner may institute legal action within the Federal Appeals Court system.

17. GENERAL. Certain FAR Sections allow the Administrator to issue a Certificate of Waiver, a Certifi-

cate of Authorization, or operations specifications which authorize a deviation. These actions permit a person or an organization to either deviate from a specific regulation or comply with special alternative provisions, conditions, or limitations. This regulatory flexibility is available to the Administrator when the specific regulatory section stipulates that it is available. There are three options available which are referred to as follows:

A. Deviation. When a regulatory section contains phrases such as "unless otherwise authorized by the Administrator", "the Administrator may ...", "if the Administrator finds ...", "the Administrator may authorize...", "the Administrator allows a deviation ...", "notwithstanding the Administrator may issue operations specifications ...", or other similar words, the regulatory flexibility is referred to as a deviation.

B. Waiver. When the regulatory section contains phrases such as "the Administrator may issue a certificate of waiver ...", "in accordance with the terms of a certificate of waiver issued by the administrator", or other similar words, the regulatory flexibility is referred to as a waiver.

C. Authorization. When the regulatory section contains words such as "in violation of the terms of an authorization issued under this section", "unless a certificate of authorization...", or other similar words, the regulatory flexibility is referred to as an authorization.

NOTE: If the specific regulatory section does not stipulate that a deviation, waiver, or authorization may be granted or issued, compliance with the regulation is mandatory. In these cases, the only methods of obtaining relief from the regulation is through the exemption process.

19. WAIVERS AND AUTHORIZATIONS. When a regulatory section stipulates that a waiver or authorization is permitted, any person may apply for a certificate of waiver or a certificate of authorization. FAA Form 7711-2, "Application for Certificate of Waiver or Authorization" must be prepared and signed by the applicant and delivered or mailed to the appropriate FAA regional or district office for processing.

A. The application must be processed in a timely manner. The assigned inspector shall review the application, obtain

appropriate additional information from the applicant, if necessary, and determine whether the applicant has provided adequate justification for a temporary waiver or authorization. The inspector shall also determine whether the applicant will provide an equivalent level of public safety during the conduct of any operation under a certificate of waiver or authorization.

(1) If the application is denied, the reasons for denial shall be specified in a letter to the applicant.

(2) If the waiver or authorization is granted, the inspector shall prepare FAA Form 7711-1, "Certificate of Waiver or Authorization", for review by the authorizing FAA manager or designated representative. The completed Certificate of Waiver or Authorization, dated and signed by the responsible FAA manager, will be mailed or delivered to the applicant. A copy of the application for a Certificate of Waiver or Authorization, both front and back, and a copy of the completed Certificate of Waiver or Authorization, shall be retained in the files of the issuing office.

B. A Certificate of Waiver or Authorization shall not be issued for any operation conducted under FAR Parts 121, 125, 129, or 135. Requests for a deviation from these FAR Parts must be requested and processed in accordance with the following paragraphs.

21. DEVIATIONS. Any person or organization may apply for a deviation when a regulatory section stipulates that a deviation is permitted. Deviations may be granted and issued to operators conducting operations under FAR Parts 121, 129, or 135. To apply for a deviation, an operator must submit a specific request to the FAA.

A. The application must be made by a letter that identifies the specific regulatory sections from which a deviation is requested. The letter and attachments, if appropriate, must contain the specific reasons the deviation is requested, information to show that an equivalent level of safety will be maintained, and any other information the FAA may require.

B. The types of information that must be submitted with the request for a deviation are described in other

sections of this handbook that relate to the specific subject matter. Unless otherwise specified by this handbook, deviations requested by operators conducting operations under FAR Parts 121, 129, and 135 must be authorized for use by operations specifications. The approval, denial, and reconsideration procedures for processing deviation requests shall be the same as the procedures for processing, issuing, or amending operations specifications.

C. The district office recordkeeping requirements for each deviation are the same as operations specifications recordkeeping requirements.

23. DEVIATIONS FOR MILITARY CONTRACT OPERATIONS

A. Section 1117 of the FA Act provides for the air transportation of government-financed passengers and property. Normally, the transportation of such persons and property must be provided by air carrier certificate holders authorized to operate under FAR Part 121.

(1) FAR § 121.57 permits the Administrator to authorize deviations to the applicable requirements of FAR Part 121, when necessary, so that operators may perform certain unique operations under a military contract. The operator must submit an application for the deviation (application to amend operations specifications) directly to the Manager, Air Transportation Division, AFS-200 with a copy to its Certificate Holding District Office (CHDO).

(2) The district office shall immediately advise its regional office that the operator has forwarded the application for a deviation and amended operations specifications to AFS-200.

B. AFS-200 shall coordinate the request with AFS-300, if appropriate. AFS-200 shall coordinate the request with the Department of Defense (DOD) in order to verify that the proposed operation is essential for national defense and not based on either an economic advantage or convenience to either the air carrier or the United States. Section 1117 of the FA Act permits the use of a foreign operator pursuant to bilateral agreement and the government of the foreign air carrier.

(1) When AFS-200/DOD coordination has been accomplished, AFS-200 will advise the appropriate Regional Flight Standards Division Manager whether the deviation is approved. If the deviation is denied, AFS-200 shall notify the operator in writing. Copies of the denial shall be provided to the appropriate region, district office, and DOD offices. If the application is approved, AFS-200 will prepare a draft of the operations specifications authorizing the deviation. AFS-200 shall include any conditions or limitations considered necessary.

(2) AFS-200 shall forward the draft operations specifications directly to the district office, and a copy to the appropriate Regional Flight Standards Division. The district office shall issue the amended operations specifications to the operator. The amendment shall contain an expiration date consistent with the duration of the specific military operation. However, the operator shall be advised that the Administrator may, at any time, terminate the grant of deviation authority covered by the amended operations specifications.

25. DEVIATION TO PERFORM AN EMERGENCY OPERATION

A. FAR §§ 121.57 and 135.19 specify requirements for obtaining deviation authority to perform an emergency operation.

(1) The term “emergency operations” means an immediate but temporary action to prevent or reduce the loss of life or property when an unanticipated threat to life or property occurs. Operations under a long term contract to provide certain types of protection (such as rescue, fire-fighting, security) to the public cannot be classified as an unanticipated, temporary action.

(2) An “emergency operation” under FAR §§ 121.57 and 135.19 is not related to the pilot-in-command responsibility and authority (emergency authority) provided in FAR § 91.3.

B. The nature of the emergency dictates whether a verbal or written amendment of operations specifications is justified. The manager of the Certificate Holding District Office must make this determination. If time permits, the district office manager may wish to consult by telephone with the regional flight standards division manager. The authorization to deviate, whether verbally or by written amendment to the operations specifications, must be justified and applicable only to a specific emergency operation. The authorization must also be for a temporary and limited period of time. If a verbal authorization is given, the certificate holder must provide documentation describing the nature of the emergency to the district office within 24 hours after completing the operation.